Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

A.O. No. 104 of 2003

United India Insurance Company Ltd.,
Kailash Gate, Muni-ki-Reti,
Rishikesh, District-Dehradun.

..... Appellant

Versus

(1)Smt.Bimla Bisht W/o late Mahipal Singh,
(2)Km.Neelam D/o late Mahipal Singh,
(3)Km.Preeti D/o late Mahipal Singh,
All Residents of Ramesh Nagar, Veh Vihar-Navada Road, Saharanpur, U.P.
(4)Sri Mahesh Prasad S/o Sri Govind Ram,
R/o Village-Jewala, Tehsil-Pratap Nagar,
District-Tehri Garhwal (Owner of Bus),
(5)Sri Anusuya Prasad S/o Sri Gauri Dutt,
R/o Khal, Patti-Silgarh,
District-Rudraprayag (Garhwal).

..... Respondents.

Sri D.S.Patni, learned counsel for the appellant,
Sri H.M.Raturi, learned counsel for the claimants/respondents.

Dated: 25th Aug.,2004

Hon'ble P.C.Verma,J.
Hon'ble B.S.Verma,J.

This appeal has been preferred by the Opp.party/appellant-Insurance Company against the judgment and order dated 07.03.2003 passed by Motor Accident Claims Tribunal, Uttarkashi in Motor Accident Claim Petition No.20 of 2002, by which the claim petition has been decreed for a sum of Rs. 5,15,000/- as compensation against the appellant alongwith interest.

2- Brief facts giving rise to this appeal are that deceased Mahipal Singh Bisht was a salesman Vikram Paint and was getting monthly salary Rs. 4000/- from this

job. Besides this he was getting one per cent commission on the sales. So his total monthly income was Rs. 10,000/- in connection with this work, he was to travel at different places. On 20.1.2002 when he was going from Uttarkashi to Chinyalisaur by Taxi Jeep No.07-C-4549 and when the said jeep reached at Kholdhar-Nalupani (Tehri-Uttarkashi Road) Bus No. 07-C-9187 which was being driven rashly and negligently came from the opposite direction and dashed against said Jeep. Due to this collision, the said Jeep fell in to ditch in which deceased Mahipal Singh Bisht received injuries and died due to said injuries.

3- The opposite parties contested the claim petition before the Tribunal denying the allegations of the claim petition. Opp.party-Insurance Company further pleaded that the owner and insurer of the Jeep in question have not been made parties, therefore the petition is bad for non-joinder of necessary parties. The Tribunal, on the pleadings of the parties, framed necessary issues and allowed the claim petition accordingly. Feeling aggrieved, the Insurance Company has come up in this appeal.

4- The learned counsel for the appellant contended that the claimants did not implead the owner and Insurance Company of Jeep No. UP 07-C-4549 in the array of parties as they were necessary parties to be impleaded. He further contended that the finding of learned Tribunal is perverse with regard to non-joinder of parties as the reason given by the Tribunal is that the claimant is at liberty to chose the owner of any one vehicle involved in the alleged accident for the purposes of compensation. He further contended that in absence of any finding regarding contributory negligence the Tribunal has erred in fixing the sole liability upon the Insurance Company. We have gone through the impugned judgment on record. The learned

Tribunal framed issue No.1 in this regard which reads as under:-

> "Whether accident took place due to rash and negligent driving of the driver of vehicle No. UP-07-C-9187 in which death is caused to deceased as alleged in the plaint?

5- The learned Tribunal while deciding the above issue at Paras 14 to 18 in its judgment has elaborately discussed regarding the contentions submitted by the appellant- Insurance Company. The Tribunal after appreciation of the evidence adduced by the parties came to the conclusion that the manner in which the accident occurred, case of contributory negligence as well as the joint collision of the vehicles is not made out and if the claim petition has been filed against the insurer of one vehicle, the Insurance Company cannot take benefit of this plea. The Insurance Company did not adduce any evidence regarding the contributory negligence of the vehicle in question. The Tribunal in holding that the accident occurred due to rash and negligent driving of the bus in question has not erred anything. The ground raised by the Insurance Company has no force and is misconceived.

6- The Tribunal has also not found the contributory negligence in the case under appeal on the basis of evidence and this ground is also misconceived and is rejected. The Insurance Company has been permitted to file an appeal on limited grounds and the grounds of challenge cannot be enlarged as envisaged in sub-section (2) of Section 149 of the Motor Vehicles Act. The Apex Court in case of ***National Insurance Company Ltd. Chandigarh versus Nicolletta Rohtagi and others reported in (2002) 7 Supreme Court Cases, Page 456*** has held that, *"even if no appeal is preferred under Section 173 of 1988 Act by an*

insured against the award of a Tribunal it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle". However, nothing has been shown to us on behalf of the appellant-Insurance Company so as to warrant any interference with the findings arrived at by the learned Tribunal in the case under appeal.

7. Thus, in view of the aforesaid law laid down by the Apex Court, the appeal filed by the appellant-Insurance Company has no force.

8. The appeal has no merit and is dismissed. The order impugned in this appeal is affirmed. There shall be no order as to costs. The amount, if deposited in the appeal in this Court, shall be remitted to the Tribunal concerned within a period of three months from today.

(B.S.Verma,J.) **(P.C.Verma,J.)**

P.Singh